

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
J.M.J. Radio, Inc.	)	File Number EB-09-PA-0287
	)	
Licensee of Station WQOR	)	NAL/Acct. No. 201032400002
	)	
Facility ID # 8092	)	FRN 0017570847

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: December 1, 2010

Released: December 1, 2010

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that J.M.J. Radio, Inc. (“J.M.J. Radio”), the licensee of radio station WQOR in Olyphant, Pennsylvania, apparently willfully and repeatedly violated Section 73.1125(a) of the Commission’s Rules (“Rules”)<sup>1</sup> by failing to maintain a management and staff presence at the Station WQOR main studio. We conclude that J.M.J. Radio is apparently liable for a total forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On November 25, 2009, an agent from the Enforcement Bureau’s Philadelphia Office (“Philadelphia Office”) conducted an inspection of Station WQOR’s main studio, which was located inside a church building at St. Joseph Oblate Seminary, 1880 Highway 315, Pittston, Pennsylvania. A church employee escorted the agent to the station’s main studio on the second floor of the church building. The agent found that the main studio was locked. When the church employee opened the door for the agent, the agent found no station personnel present. The church employee reported that no one associated with Station WQOR works at the main studio location and the room is always locked. He further reported that, although he was not associated with Station WQOR, he often helped the station engineer if he needed any assistance at the main studio.

3. After speaking to the church employee, the agent contacted the station engineer by telephone and requested his assistance with the inspection. The station engineer arrived at the main studio within thirty minutes and the agent conducted the inspection. In response to questions about staffing at the main studio, the station engineer reported that the room was always locked and that there were no designated full-time or part-time personnel at the main studio. The station engineer also reported that he usually came to the main studio once a week to review Emergency Alert System (EAS) log printouts and perform any necessary maintenance.<sup>2</sup> The agent advised the station engineer that the station must maintain a presence at its main studio during normal business hours.

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<sup>1</sup> 47 C.F.R. § 73.1125.

<sup>2</sup> The agent found that the station had broadcast transmission capabilities, operational EAS equipment, and a complete local public inspection file.

4. On December 17, 2009, another FCC agent attempted to conduct a follow-up inspection at Station WQOR's main studio at 1880 Highway 315 in Pittston, Pennsylvania. The agent observed that there were no employees at the main studio to facilitate an FCC inspection or to provide public access. The agent then contacted the licensee and conducted a phone conversation with an individual identified in the station records as a Director and Officer of J.M.J. Radio. She acknowledged that the main studio does not have any designated personnel. The agent advised the J.M.J. employee that the station must maintain a presence at its main studio during normal business hours. The J.M.J. employee stated that she was not aware of the main studio requirement and would thereafter staff the station's main studio as required.

### III. DISCUSSION

5. Section 503(b) of the Communications Act of 1934, as amended ("Act")<sup>3</sup> provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>4</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>5</sup>

6. Section 73.1125(a) of the Rules requires broadcast stations to maintain a main studio.<sup>6</sup> The Commission has interpreted Section 73.1125 (also known as the "Main Studio Rule") to require, among other things, that a licensee maintain a "meaningful management and staff presence" at its main studio.<sup>7</sup> Specifically, the Commission has found that a main studio "must, at a minimum, maintain full-time managerial and full-time staff personnel."<sup>8</sup> Although management personnel need not be "chained to their desks" during normal business hours, they must "report to work at the main studio on a daily basis, spend a substantial amount of time there and...use the studio as a 'home base.'"<sup>9</sup>

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act..." See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991).

<sup>5</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

<sup>6</sup> 47 C.F.R. § 73.1125.

<sup>7</sup> *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026 (1988) ("Main Studio and Program Origination Rules"), *erratum issued*, 3 FCC Rcd 5717 (1988) (correcting language in n.29).

<sup>8</sup> See *Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 & n.2 (1991) ("*Jones Eastern*") (noting that, "This is not to say that the same staff person and manager must be assigned full-time to the main studio. Rather, there must be management and staff presence on a full-time basis during normal business hours to be considered 'meaningful.'"), *clarified*, 7 FCC Rcd 6800 (1992) ("*Jones Eastern II*"). See also *Birach Broadcasting Corporation*, Notice of Apparent Liability, 25 FCC Rcd 2635 (Enf. Bur. 2010).

<sup>9</sup> *Jones Eastern II*, 7 FCC Rcd at 6802.

7. During the November 25, 2009 and December 17, 2009 inspections of Station WQOR, agents found that there were no station personnel present at the main studio. When an agent interviewed the station engineer on November 25, 2009, the station engineer admitted that Station WQOR does not have any designated full-time or part-time personnel at its main studio and the room is always locked. Although the agent explained the main studio staffing requirements to the station engineer at that time, there were again no staff or management available at the Station WQOR main studio three weeks later. An agent then contacted an officer of J.M.J. Radio, who admitted that the main studio does not have any designated personnel. Accordingly, based on the evidence before us, we find that J.M.J. Radio apparently willfully and repeatedly violated Section 73.1125(a) of the Rules by failing to maintain a full-time management and staff presence at the Station WQOR main studio during regular business hours.

8. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount is \$7,000 for violation of main studio rule.<sup>10</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.<sup>11</sup> Here, we find that J.M.J. Radio's failure to correct the violation after receiving a warning during the first inspection was egregious and warrants an upward adjustment. Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that J.M.J. Radio is apparently liable for a forfeiture in the amount of \$10,000. We further order J.M.J. Radio to submit a sworn written statement within 30 days of this *NAL* that it is now in compliance with the Main Studio Rule.

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, J.M.J. Radio, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 73.1125(a) of the Rules.<sup>12</sup>

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, J.M.J. Radio Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. **IT IS FURTHER ORDERED** that J.M.J. Radio Inc. **SHALL SUBMIT** a sworn statement, as described in paragraph 8, within thirty days of the release date of this *NAL*. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, Philadelphia Office, One Oxford Valley Office Building, Room 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania, 19047-1859.

12. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by

<sup>10</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

<sup>11</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>12</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1125(a).

overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>13</sup> If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). J.M.J. Radio, Inc. shall also send electronic notification to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov) on the date said payment is made.

13. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules. The written statement, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047 and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to J.M.J. Radio, Inc. at 1880 Highway 315, Pittston, Pennsylvania, 18640.

FEDERAL COMMUNICATIONS COMMISSION

Gene J Stanbro  
District Director,  
Philadelphia Office  
Northeast Region  
Enforcement Bureau

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<sup>13</sup> See 47 C.F.R. §1.1914.